



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-3/51337

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to medical assistance, a hearing was held on February 21, 2002, at Barron, Wisconsin. Hearings scheduled for December 11, 2001 and January 14, 2002 were rescheduled at the petitioner's request.

The issue for determination is whether the petitioner is entitled to an increase in the asset limit allowed under the spousal impoverishment provisions of the medical assistance program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Denise Westin, ESS
Barron County Dept Of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Barron County.
2. The petitioner applied for institutional medical assistance on October 30, 2001. That application was denied because his assets exceeded that allowed for the program.

3. At the time the petitioner entered the nursing home he and his wife had a total of \$149,915.01 in assets. As of February 15, 2001 their assets had fallen to \$86,551.52. They seek to allocate all of those assets to the wife.
4. The petitioner and his wife have \$9,062.15 in a checking account that produces no income.
5. The remaining assets of the petitioner and his spouse produce \$450.43 per month.
6. The petitioner receives \$868 in social security each month.
7. The petitioner's spouse receives \$295 in social security each month.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets greater than \$100,000 but less than \$174,000 to assign one-half of their total assets to the spouse still living in the community. §49.455(6)(b)3, Stats. *MA Handbook*, Appendix §23.4.2. An institutionalized person can have up to \$2,000 in assets, which has the effect of increasing the total assets a couple may retain by that amount. When the petitioner entered the nursing home he and his wife had \$149,915.01 so their assets must not exceed \$76,957.53 (one-half of \$149,915.01 plus \$2,000). Nevertheless, if the community spouse's income falls short of her needs, she may request through a fair hearing that the asset limit be increased so that more income can be produced. §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

The petitioner and his spouse have only \$1,163 in combined income before interest income is considered. Even the interest from the assets does not raise the spouse's income to \$1,935. However, this does not mean they are automatically eligible for the increased asset limit. Because the purpose of allowing a spouse to increase her assets is to provide her with more money to live off from, only resources that generate income can be reallocated at a fair hearing to the community spouse and exempted from the medical assistance asset limit. DHA Decision No. MRA-65/49853, *citing* §49.455(8)(d), Stats.; DHA Final Decisions No. MRA-70/15380 and No. MRA-68/48394. In this matter the petitioner and his wife have over \$9,000 in a bank account that produces no income. Because this asset is not exempt, it places the petitioner over the \$2,000 asset limit for medical assistance, which makes him ineligible for the program. I suggest that petitioner's spouse move that money into an interest bearing checking or savings account before she reapplies for an increase in the asset limit. This will be unnecessary, however, if the assets of the petitioner and his spouse fall below \$76,957.53.

CONCLUSIONS OF LAW

1. The petitioner may not assign more than half of the total assets held by him and his wife to his wife because more than \$2,000 of those assets do not produce income.
2. The petitioner is ineligible for institutional medical assistance because his assets exceed the program's limit.

NOW, THEREFORE, it is

ORDERED

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 27th day of
March, 2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
41/MDO